UNITED
NATIONS

AT

Administrative Tribunal

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15 July 1996

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 748

Case No. 852: ZEGHOUANI

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Francis Spain; Mr. Mayer Gabay;

Whereas, on 7 November 1994, Micheline Zéghouani, a former staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 22 March 1995, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal:

> "To [a] order the Secretary-General of the United Nations to pay me the repatriation grant to which I am entitled in accordance with article 109.5 of the Staff Rules, as well as the interest [accrued] thereon from the date of my separation from service ... [b] the sums corresponding to home leave that were verbally refused to me ..."

Whereas the Respondent filed his answer on 19 May 1995;

Whereas the Applicant filed written observations on 30 June 1995;

Whereas the facts in the case are as follows:

The Applicant, an internationally recruited French national, entered the service of the United Nations on 13 September 1981 and

served thereafter at the United Nations Office at Geneva (UNOG), until her retirement on 30 June 1994. During her service with UNOG, she resided in Ferney-Voltaire, France.

On 27 June 1994, the Applicant wrote to the Personnel Service that, as she had been internationally recruited in Paris in 1981, she requested payment of the repatriation grant and amounts corresponding to her home leave entitlements since 1981. In a reply dated 6 July 1994, a Personnel Officer, Personnel Administration Section, informed the Applicant, "in accordance with Staff Rule 109.5(i) you are not eligible for payment of repatriation grant due to the fact that you resided in your home country while performing official duties".

In a memorandum dated 18 July 1994, the Applicant requested the Secretary-General to review the decision to deny her the repatriation grant and entitlement to home leave. She also requested permission to submit an appeal directly to the Tribunal. In a reply dated 11 August 1994, the Assistant Secretary-General for Human Resources Management advised the Applicant, "Since the facts in this case are not in dispute and since your claim raises only issues of law, you may submit your case directly to the Tribunal without prior consideration by a joint appeals body.".

On 21 July 1994, Tribunal held in Judgement No. 656, Kremer and Gourdon, that French nationals residing in France while working at the United Nations Office at Geneva were entitled to the repatriation grant. On 10 March 1995, the Secretary-General reported this Judgement to the General Assembly, "so that it can, if it wishes, take appropriate legislative action in the light of the Tribunal's interpretation of the Staff Regulations in a manner that has invalidated long-standing policy". On 6 April 1995, in resolution 49/241, the General Assembly amended the Staff Regulations to ensure that "the repatriation grant and other expatriate benefits be limited to staff who both work and reside in a country other than their home country". On 26 April 1995, the

Under-Secretary-General for Administration and Management informed the Officer-in-Charge of the Division of Administration in UNOG, "you are hereby instructed to pay repatriation grant to eligible staff members who lived in France, worked in Geneva, and have separated during the period from 21 July 1994, the date of the Judgement No. 656, through 6 April 1995, the date of the amendment to Annex IV to the Staff Regulations."

On 22 March 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

Judgement No. 656 entitles the Applicant to payment of the repatriation grant. For similar reasons, she should have been granted home leave and should therefore be compensated for this entitlement.

Whereas the Respondent's principal contentions are:

1. The General Assembly, in promulgating new Staff Regulations in the light of Judgement No. 656, authorized payment of the repatriation grant to staff retiring between the date of the Judgement and the date of the new Regulations. The Applicant will be paid the repatriation grant, and her claim is therefore moot.

2. The Applicant's claim to be paid compensation for alleged home leave entitlements is time-barred pursuant to Staff Rule 103.15.

The Tribunal, having deliberated from 12 to 15 July 1996, now pronounces the following judgement:

I. The Tribunal notes that the Respondent has paid the repatriation grant to the Applicant. Accordingly, the Applicant's plea for payment of the grant is no longer at issue. It remains for

the Tribunal to consider the Applicant's claim for compensation for home leave entitlements, dating back to 1981.

II. The Respondent contends that these claims are time-barred. The Applicant argues that, inasmuch as she was treated by the Respondent as not entitled to home leave and travel costs, Staff Rule 103.15 was not applicable to her. This argument lacks legal validity. The meaning of the rule is perfectly clear and the words in Rule 103.5 "payment to which he or she is entitled" must be construed as meaning that, in order to receive a retroactive payment to which a staff member believes he or she is entitled, he or she must claim it within a year of the denial of such an entitlement.

III. There is no evidence in the record that the Applicant asked for, and was refused, home leave during the years in question. She apparently did not claim any reimbursement, because she did not believe she would be entitled to it. After Judgement No. 656, Kremer and Gourdon, of 20 July 1994, became known to her, she decided to claim financial entitlement to home leave. The Tribunal finds that, by this time, her claim was time-barred, except with respect to the final home leave period. With regard to this period of home leave for 1994, the Tribunal finds that the Applicant was not entitled to it, because, under the provisions of Staff Rule 105.3(b)(ii), staff are entitled to home leave only if their service "is expected by the Secretary-General to continue: a. at least six months beyond the date of his or her return, from any proposed home leave; ..." Since the Applicant retired two days after submitting her request, she did not meet the conditions for home leave entitlement in 1994.

IV. There remains the question of interest on the repatriation grant. The Tribunal holds, as it did in its Judgement No. 747, Kremer and Gourdon, dated 15 July 1996, that the claim of interest on the repatriation grant should be rejected, for the reasons set forth in that Judgement.

V. The application is therefore rejected in its entirety.

(Signatures)

Samar SEN
President

Francis SPAIN
Member

Mayer GABAY
Member

Geneva, 15 July 1996

R. María VICIEN-MILBURN
Executive Secretary